

§ 1926.14

and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a “subcontractor.” Generally, the furnishing of prestressed concrete beams and prestressed structural steel would be considered manufacturing; therefore a supplier of such materials would not be considered a “subcontractor.” An example of material supplied “for the specific project on a customized basis” as that phrase is used in this section would be ventilating ducts, fabricated in a shop away from the construction job site and specifically cut for the project according to design specifications. On the other hand, if a contractor buys standard size nails from a foundry, the foundry would not be a covered “subcontractor.” Ordinarily a contract for the supplying of construction equipment to a contractor would not, in and of itself, be considered a “subcontractor” for purposes of this part.

§ 1926.14 Federal contract for “mixed” types of performance.

(a) It is the intent of the Congress to provide safety and health protection of Federal, federally financed, or federally assisted construction. See, for example, H. Report No. 91-241, 91st Cong., first session, p. 1 (1969). Thus, it is clear that when a Federal contract calls for mixed types of performance, such as both manufacturing and construction, section 107 would apply to the construction. By its express terms, section 107 applies to a contract which is “for construction, alteration, and/or repair.” Such a contract is not required to be exclusively for such services. The application of the section is not limited to contracts which permit an overall characterization as “construction contracts.” The text of section 107 is not so limited.

(b) When the mixed types of performances include both construction and manufacturing, see also § 1926.15(b) concerning the relationship between the Walsh-Healey Public Contracts Act and section 107.

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§ 1926.15 Relationship to the Service Contract Act; Walsh-Healey Public Contracts Act.

(a) A contract for “construction” is one for nonpersonal service. See, e.g., 41 CFR 1-1.208. Section 2(e) of the Service Contract Act of 1965 requires as a condition of every Federal contract (and bid specification therefor) exceeding \$2,500, the “principal purpose” of which is to furnish services to the United States through the use of “service employees,” that certain safety and health standards be met. See 29 CFR part 1925, which contains the Department rules concerning these standards. Section 7 of the Service Contract Act provides that the Act shall not apply to “any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works.” It is clear from the legislative history of section 107 that no gaps in coverage between the two statutes are intended.

(b) The Walsh-Healey Public Contracts Act requires that contracts entered into by any Federal agency for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000 must contain, among other provisions, a requirement that “no part of such contract will be performed nor will any of the materials, supplies, articles or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract.” The rules of the Secretary concerning these standards are published in 41 CFR part 50-204, and express the Secretary of Labor’s interpretation and application of section 1(e) of the Walsh-Healey Public Contracts Act to certain particular working conditions. None of the described working conditions are intended to deal with construction activities, although such activities may conceivably be a part of a contract which is subject to the Walsh-Healey Public Contracts Act. Nevertheless, such activities remain subject to the general statutory duty

prescribed by section 1(e). Section 103(b) of the Contract Work Hours and Safety Standards Act provides, among other things, that the Act shall not apply to any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act.

§ 1926.16 Rules of construction.

(a) The prime contractor and any subcontractors may make their own arrangements with respect to obligations which might be more appropriately treated on a jobsite basis rather than individually. Thus, for example, the prime contractor and his subcontractors may wish to make an express agreement that the prime contractor or one of the subcontractors will provide all required first-aid or toilet facilities, thus relieving the subcontractors from the actual, but not any legal, responsibility (or, as the case may be, relieving the other subcontractors from this responsibility). In no case shall the prime contractor be relieved of overall responsibility for compliance with the requirements of this part for all work to be performed under the contract.

(b) By contracting for full performance of a contract subject to section 107 of the Act, the prime contractor assumes all obligations prescribed as employer obligations under the standards contained in this part, whether or not he subcontracts any part of the work.

(c) To the extent that a subcontractor of any tier agrees to perform any part of the contract, he also assumes responsibility for complying with the standards in this part with respect to that part. Thus, the prime contractor assumes the entire responsibility under the contract and the subcontractor assumes responsibility with respect to his portion of the work. With respect to subcontracted work, the prime contractor and any subcontractor or subcontractors shall be deemed to have joint responsibility.

(d) Where joint responsibility exists, both the prime contractor and his subcontractor or subcontractors, regardless of tier, shall be considered subject to the enforcement provisions of the Act.

Subpart C—General Safety and Health Provisions

AUTHORITY: Sec. 3704, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 6-96 (62 FR 111), or 5-2007 (72 FR 31160) as applicable; and 29 CFR part 1911.

§ 1926.20 General safety and health provisions.

(a) *Contractor requirements.* (1) Section 107 of the Act requires that it shall be a condition of each contract which is entered into under legislation subject to Reorganization Plan Number 14 of 1950 (64 Stat. 1267), as defined in § 1926.12, and is for construction, alteration, and/or repair, including painting and decorating, that no contractor or subcontractor for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety.

(b) *Accident prevention responsibilities.* (1) It shall be the responsibility of the employer to initiate and maintain such programs as may be necessary to comply with this part.

(2) Such programs shall provide for frequent and regular inspections of the job sites, materials, and equipment to be made by competent persons designated by the employers.

(3) The use of any machinery, tool, material, or equipment which is not in compliance with any applicable requirement of this part is prohibited. Such machine, tool, material, or equipment shall either be identified as unsafe by tagging or locking the controls to render them inoperable or shall be physically removed from its place of operation.

(4) The employer shall permit only those employees qualified by training or experience to operate equipment and machinery.

(c) The standards contained in this part shall apply with respect to employments performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the